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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 21 2004

In the Matter of)
)
Petition of the)
National Association of Broadcasters)
For a Declaratory Ruling on Local)
Programming by Satellite Digital Audio)
Radio Service)

Docket No. MB 04-160

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To The Commission

REPLY COMMENTS OF KZIA, INC.

KZIA, Inc., by its attorneys, hereby submits its Reply Comments to the Opposition of Sirius Satellite Radio Inc. ("Sirius") and XM Radio Inc. ("XM"), filed June 4, 2004 (the "Opposition"), responding to the above-reference Petition for Declaratory Ruling (the "Petition") filed by the National Association of Broadcasters ("NAB").

KZIA, Inc. wholly supports the Petition. KZIA, Inc. is the owner and operator of KZIA(FM), Cedar Rapids, Iowa. KZIA, Inc. owns no other radio stations. As a small local broadcaster, KZIA, Inc. is deeply concerned about the potential for satellite digital radio services ("SDARS") such as XM and Sirius, each with 120 channels at their disposal, to duplicate programming offered by local broadcasters – including the basics of local service, weather and traffic – without any associated commitment to truly local service. As such, KZIA, Inc. urges the Commission to grant NAB's Petition.

In the Opposition, Sirius and XM claim that "no real controversy or uncertainty exists." The Opposition, however, carefully avoids the central point of the Petition.¹ XM and Sirius both made repeated pledges throughout the proceedings that led to their

¹ *Petition of the National Association of Broadcasters For a Declaratory Ruling on Local Programming by Satellite Digital Audio Radio Service, Opposition of Sirius Satellite Radio Inc. and XM Radio Inc.*, Docket No. MB 04-160, Jun. 4, 2004 at 4 ("Opposition").

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licensing that they would not target local audiences with local programming. In particular, both XM and Sirius made specific statements that they would not carry local news, weather, and traffic.² The Commission relied on these promises in granting licenses for satellite radio.³ The fact that XM and Sirius have broken these promises with their current “localized” service, and clearly intend to extend such local service, is highly controversial and creates enormous uncertainty.

Moreover, the “localized” services now offered by XM and Sirius take the bandwidth and resources that could have been devoted to serving the niche audiences that XM and Sirius pledged to serve. Indeed, the potential for increased programming targeted to children, senior citizens, and foreign language audiences was a key consideration for the Commission.⁴ At present, however, XM and Sirius each devote just two channels to children’s programming, no channels to senior citizens and no channels to foreign language programming other than Spanish.⁵

As both their programming choices and their statements in the Opposition demonstrate, XM and Sirius seek to make their formats virtually indistinguishable from local radio, complete with “localized” news, weather and traffic. Without the Commission’s intervention, two companies, with 120 channels each, will reach into every market and try to mimic what local broadcasters do. Unlike local broadcasters, however,

² See, e.g., *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Comments of American Mobile Radio Corporation*, Docket No. IB 95-91, Sept. 15, 1995 at 18; *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Comments of CD Radio, Inc.*, Docket No. IB 95-91, Sept. 15, 1995 at 73.

³ See *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Memorandum Opinion and Order and further Notice of Proposed Rulemaking*, 12 FCC Rcd 5754 (1997) (“DARSS Order”).

⁴ *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Notice of Proposed Rulemaking*, 11 FCC Rd. 1 at ¶ 2 (1995).

⁵ See <http://www.siriusradio.com/pdf/channelguide.pdf>; http://www.xmradio.com/programming/full_channel_listing.jsp?sort=number (both visited Jun. 21, 2004).

XM and Sirius are not subject to local public interest requirements or local ownership limits. In short, these national satellite companies have no local involvement with and no local investment in the communities they now purport to serve.

The Commission, in authorizing satellite radio, stated:

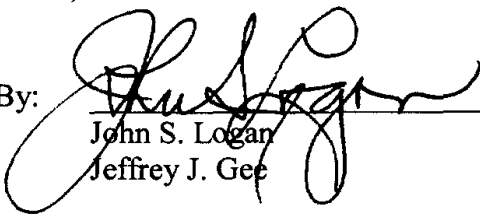
We emphasize that we remain committed to supporting a vibrant and vital terrestrial radio service for the public. Accordingly, we will continue to monitor and evaluate the potential and actual impact of satellite DARS, particularly in small radio markets, so that we will be able to take any necessary action to safeguard the important service that terrestrial radio provides.⁶

The deployment of "localized" services by XM and Sirius represents a major new development in satellite DARS – one that may have a profound impact on the services provided by small market broadcasters such as KZIA, Inc. The Commission must clarify that it authorized a national-only satellite radio service. To this end, KZIA, Inc. urges the Commission to grant NAB's Petition.

Respectfully Submitted,

KZIA, INC.

By:


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June 21, 2004

⁶ DARSS Order at ¶ 33.


CERTIFICATE OF SERVICE

I, Tammi Foxwell, a secretary at Dow, Lohnes & Albertson, PLLC, hereby certify that a true and correct copy of the foregoing "Reply Comments of KZIA, Inc." was sent on this 21st day of June, 2004, *via* first-class United States mail, postage pre-paid, to the following:

National Association of Broadcasters
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Attn: Ron Levin, Senior Vice President

Sirius Satellite Radio Inc.
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New York, NY 10020
Attn: Patrick L. Donnelly, Executive Vice
President, General Counsel and Secretary



Tammi Foxwell